

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MICHAEL SATRIANO

Claimant

V.

MCCANN PLUMBING & HEATING, INC.

Respondent

AND

FEDERATED MUTUAL INS. CO.

Insurance Carrier

CS-00-0276-217

AP-00-0451-770

ORDER

STATEMENT OF THE CASE

Michael Satriano requests review of the June 25, 2020, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. Anna M. Mark, of Mission, Kansas, appeared for Mr. Satriano. Thomas G. Munsell, of Kansas City, Missouri, appeared for respondent and its insurance carrier (respondent).

The ALJ found the prevailing factor causing Mr. Satriano's condition is not his work-related repetitive trauma, but rather a motor vehicle accident occurring on October 31, 2019. The ALJ denied additional medical treatment and additional temporary total disability benefits.

The record on appeal is the same as considered by the ALJ and consists of the transcript of the June 24, 2020, Preliminary Hearing and the exhibits, the transcript of the June 8, 2020, evidentiary deposition of Prem Parmar, M.D., and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Mr. Satriano argues the prevailing factor of his right shoulder injury and need for surgery is his repetitive work activities with respondent.

Respondent maintains the ALJ's Order should be affirmed. Respondent argues Mr. Satriano failed to prove his repetitive work injury is the prevailing factor causing his new supraspinatus and infraspinatus tears and need for additional treatment.

The issues for the Board's review are:

1. Did Mr. Satriano's right shoulder injury arise out of and in the course of his employment?
2. What is the prevailing factor causing Mr. Satriano's right shoulder injury and need for treatment?

FINDINGS OF FACT

Mr. Satriano worked for respondent for 34 years as a licensed plumber. In this position, Mr. Satriano replaces water heaters, drain lines, faucets, garbage disposals, and provides other residential plumbing services. Mr. Satriano sustained a compensable right shoulder injury due to repetitive trauma, with an injury date of November 27, 2017.

On July 15, 2019, Dr. Craig Satterlee, the physician authorized to provide medical treatment for Mr. Satriano's work-related injury, ordered an MRI of Mr. Satriano's right shoulder. After reviewing the MRI and performing a physical examination, Dr. Satterlee diagnosed Mr. Satriano with a right shoulder rotator cuff "tear of the supraspinatus little bit to the infraspinatus and subscapularis with tearing of the long head of the biceps."¹ Dr. Satterlee found the prevailing factor of Mr. Satriano's condition to be his repetitive work activity.

Dr. Satterlee performed an arthroscopic subacromial decompression, distal clavicle excision, and rotator cuff repair of Mr. Satriano's right shoulder on July 24, 2019. Mr. Satriano then participated in physical therapy. Mr. Satriano showed improvement, but continued to complain of pain and weakness in his right shoulder through October 31, 2019.

On October 31, 2019, Mr. Satriano was a passenger in a van involved in a motor vehicle accident on Interstate 435 in Clay County, Missouri. Conditions were icy, and the driver of the van lost control, striking an abandoned vehicle on the shoulder. Both vehicles left the roadway. The van rolled sideways down an embankment and came to rest on its passenger side. Mr. Satriano was transported from the scene by ambulance and was hospitalized for two days. Mr. Satriano suffered a collapsed lung, two transverse process fractures of his low back, and fractured ribs from the motor vehicle accident.

Mr. Satriano returned to Dr. Satterlee on November 18, 2019. Dr. Satterlee wrote, "In light of the nature of his motor vehicle accident and that he fell directly on his shoulder inside his van and it hurts more since then especially with checking the rotator cuff muscle

¹ Parmar Depo., Ex. 12 at 1.

that we repaired, I think we should get a new MRI of his shoulder.”² On December 23, 2019, Dr. Satterlee reported:

[The MRI] shows that [Mr. Satriano’s] subscapularis which we had repaired is intact. It shows a re-tear with retraction of 3 cm to the supraspinatus which we had repaired previously. It shows a new tear of the infraspinatus with 4-1/2 cm of retraction. There is only mild atrophy of the supra and infraspinatus which indicates a more recent tear and not a chronic tear after his other surgery. So it appears the prevailing cause of his new tear is his motor vehicle accident as it would have had sufficient energy involved to cause not only re-tear of his top tendon but a new tear with retraction of his infraspinatus back tendon. Additionally he has had no other reported injury of significant magnitude to have caused this situation.³

On December 23, 2019, Dr. Satterlee determined Mr. Satriano reached maximum medical improvement related to his work-related injury by repetitive trauma. Dr. Satterlee recommended a right shoulder rotator cuff repair through his car insurance carrier. In a report dated January 27, 2019, Dr. Satterlee wrote Mr. Satriano needed no further medical treatment related to his work-related injury. He provided a rating opinion of 12 percent permanent partial impairment to the right shoulder based on the *AMA Guides*.⁴

Dr. Prem Parmar, orthopedic surgeon, examined Mr. Satriano at his counsel’s request on March 10, 2020. Mr. Satriano complained of pain, weakness, catching, and popping in his right shoulder. Dr. Parmar reviewed Mr. Satriano’s medical records and performed a physical examination, finding:

At this point in time, I believe the recurrent rotator cuff tear is most likely due to failure of the previous repair done on July 24, 2019, and not from the car accident. I say this because the patient states to me that the pain he has currently is no different than the pain he had weeks prior to the car accident. I obviously am assuming the patient is being honest and forthright with me and this is also based on the medical records that I have reviewed that have been sent to me. At this point in time, I would recommend the patient has two options. One is to live with his current issues or to have repeat surgery which would in my opinion would be a right shoulder arthroscopy with a superior capsular reconstruction and indicated procedures. The prevailing factor for this treatment recommendation is the patient’s work related repetitive type injury over the past three decades.⁵

PRINCIPLES OF LAW

² P.H. Trans., Resp. Ex. 1 at 2.

³ P.H. Trans., Resp. Ex. 3 at 2.

⁴ American Medical Ass’n, *Guides to the Evaluation of Permanent Impairment* (6th ed.).

⁵ Parmar Depo., Ex. 1 at 2.

K.S.A. 2017 Supp. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2017 Supp. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2017 Supp. 44-508(f) states, in part:

(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

K.S.A. 2017 Supp. 44-508(g) states:

"Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁶ Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2017 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.⁷

ANALYSIS

Mr. Satriano has the burden of proving by a preponderance of the credible evidence it is more probably true than not the rotator cuff tear arises out of his employment, and the prevailing factor for the condition is the injury by repetitive trauma, and not the intervening car accident.

The ALJ found, and the undersigned agrees, Dr. Satterlee, as the treating surgeon, is in the best position to assess what aspects of Mr. Satriano's shoulder injury are related to the work injury or the result of the car accident. Dr. Satterlee was the only medical expert who had actually seen the damage to Mr. Satriano's shoulder during his right shoulder surgery and before the motor vehicle accident. Because he performed Mr. Satriano's surgery, he knows exactly the extent of shoulder damage experienced by Mr. Satriano as the result of his work-related injury by repetitive trauma.

Dr. Satterlee specifically identified an infraspinatus tear that was not present prior to the car accident. He also identified a re-tear of the work-related rotator cuff tear. Simply stated, Dr. Satterlee is in a better position to opine on the condition of Mr. Satriano's shoulder when he was actively treating Mr. Satriano.

There is no doubt Mr. Satriano suffered a serious shoulder injury resulting from his injury by repetitive trauma. However, the evidence supports a finding Mr. Satriano experienced an intervening motor vehicle accident that is the prevailing factor causing his current need for medical treatment for the right shoulder.

CONCLUSION

Mr. Satriano failed to prove the prevailing factor causing his current shoulder condition and need for treatment is his work-related injury by repetitive trauma.

ORDER

⁶ K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

⁷ K.S.A. 2018 Supp. 44-555c(j).

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated June 25, 2020, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2020.

HONORABLE SETH G. VALERIUS
BOARD MEMBER

c: Anna M. Mark, Attorney for Mr. Satriano
Thomas G. Munsell, Attorney for Respondent and its Insurance Carrier
Hon. Kenneth J. Hursh, Administrative Law Judge